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ABROAD AT HOME | Anthony Lewis

Spies and Non-Spies

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It would be unbelievable in fiction: Four Americans arrested on espionage charges in five days. Two of them former employees of the super-secret National Security Agency and the Central Intelligence Agency. Secrets allegedly flowing for years to three different powers — the Soviet Union, China and Israel.

If the damage to national security is half as bad as officials are saying, these are among the most serious prosecutions brought under the Espionage Act since Congress passed it in 1917. But that raises a profound irony.

While the Government tries to cope with the grave consequences of real spying, it is bringing the weight of the Espionage Act down upon someone who did not spy for any foreign power. He acted not to weaken but to alert the United States. And what he did caused no identifiable damage to the national security.

Those are facts in the case of Samuel Loring Morison, a former Navy intelligence analyst who was convicted last month of violating the Espionage Act. He is due to be sentenced next Wednesday. And even though what he did was not spying, and has never before been the basis of an Espionage Act conviction, he is subject to a sentence of up to 40 years in prison.

What Mr. Morison did was to leak three photographs, taken from a U.S. satellite, of a Soviet aircraft carrier under construction. He sent them to Jane's Defense Weekly, a British military magazine. He was not paid. He did it, he said, because the carrier was a significant new element in the Soviet fleet — and publication would alert Americans to the threats.

Morison did not commit espionage

Mr. Morison is deeply, even obsessively committed to the idea of a strong U.S. Navy. If Americans knew what the Russians were doing, he said, there would not be all this silly anti-defense talk.

The Reagan Administration used the Morison case to try to turn the Espionage Act into something the United States has never had: a criminal statute against leaks. And by persuading the trial judge and then the jury, it did create something very much like the British Official Secrets Act.

An official secrets act punishes disclosure of official information even when it is published, not slipped to an enemy, and even when it does no provable harm. In the Morison case a witness who had run our satellite photograph operation for 10 years said the Russians knew all about it and would not benefit from the picture in Jane's. But the judge said the jury could weigh "potential" damage — without limiting that hazy term.

In the current atmosphere of alarm about real spying, I suppose there is a danger that Mr. Morison will be sentenced to a prison term, inappropriate as that would be for a "crime" never before punished. But the point of the case is not only the personal tragedy involved.

"The hallmark of a truly effective

internal security system," Justice Potter Stewart of the Supreme Court said in 1971, in the Pentagon Papers case, "would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained." In other words, the Government should focus on a limited area of true secrecy instead of using the blunderbuss approach and trying to stamp everything secret.

The Morison case is the blunderbuss approach. No real spy is going to be discouraged by the Government's fitful moves against leaks. That course wastes resources and weakens the credibility of the effort to protect important secrets.

The prosecution of Mr. Morison also says a good deal about the constitutional faith of the Reagan Administration. The foundation of our Constitution is the Separation of Powers. Congress makes laws, not the President.

If we need a law against leaks, the American way would be to go to Congress and ask for one. But Attorney General Meese, with all his talk of respect for the Legislature and the danger of activist judges, has not done that. He has asked the courts to read the crime of leaking into a 68-year-old act against spying. Why? Because he knows that Congress would not pass a general law against leaks. The end justifies the means.

Espionage and leaks are wholly different things in the American tradition. Spying strengthens foreign powers. Leaking, an everyday occurrence in Washington, is part of the process that enables citizens to judge the policy of their Government. We think that process strengthens, not weakens America. □